The writ was started, as I understand it, because no action was taken either by the vendor or his solicitors to complete the transfer. The first argument by the defendant's counsel was that the rejection by the court of the application by the administrator to transfer the land had absolved them from any duty to complete and because of that the contract had been frustrated. The short answer to that as given by learned counsel for the plaintiffs was that that was putting the cart before the horse. It was also not true that the court had rejected the application. Quite clearly on the advice of the counsel for the defendants the court realised that the application was premature and that it should have been made after the approval of the Ruler-in-Council had been obtained. Counsel for the defendant could have but did not adopt the course of adjourning the originating summons until the decision of the Ruler-in-Council was known. The argument that the defendant had done everything within his power to complete the purchase was untenable and untrue.

Next, it was clear from a consideration of the correspondence that the withdrawal of the first approval was because of the failure at any time to pay the premium. In the absence of any provisions in the agreement of sale quite clearly the premium must be paid by the vendor in order to adduce a good and registrable title. It therefore did not lie in his mouth to say that there was no approval. Fortunately the purchasers were astute enough to apply for the removal of the restriction themselves, and having obtained the approval to forward the money to the Government against the balance of the purchase price which they had to pay.

Counsel for the defendant however said that he did not know of the letter from his firm dated July 6, 1973 and Letter B. He went through the motion of searching his file and he advised that he was unable to find these two letters. While I accepted his explanation without reservation I did not understand him to say that these letters were not received or were not in existence; they could have been mislaid or put in the wrong file, and in any event there was ample time for him if he desired to challenge their existence to check from the records of the Land Office. In my view there could be no doubt about the genuineness of the existence of these letters. References therein to the files both of the solicitors for the vendor and of the Land Office were in my view proof of their existence.

The main contention of the defendant was that he had performed all his obligations under the agreement but that the agreement had been frustrated by the refusal to lift the restriction. I had already dealt with what I believed to be the reason why the first consent to lifting the restriction was revoked and held the defendant himself to blame for it. In the events that happened there is now no more restriction and there is no impediment at law except for the formal approval of court for sale by the administrator to the completion of the agreement. I could not see that the defendant had any leg, legal or equitable, to stand on and therefore I make an order in terms of the summons for specific performance of the agreement of sale, with costs.

The defendant will now have to apply to court for approval of the sale. I venture to believe that the application by an administrator to sell a piece of land of which he himself is the sole beneficiary is only a matter of formality but I should make it clear that in the unlikely event of a refusal by the court the defendant would not be in contempt.

Order accordingly.

Solicitors: *Ling & Lee; T. C. Tang & Co.*

PALKA UTAMA SHIPPING CO. LTD. v. "SRI MELATI" (OWNERS) & PARTIES INTERESTED; THE "SRI MELATI"

[O.C.J. (Arulanandom J.) September 8, 1975]
[Penang — In Rem Admiralty Suit No. 5 of 1975]

Shipping — Admiralty suit in rem — Writ issued against defendants for payment of goods and services rendered — Ship arrested on issuance of warrant of arrest — Defendants sought to set aside writ — Claim that defendants not liable in personam and therefore, action in rem not maintainable — Whether arrest was wrongful — Courts of Judicature Act, 1964, s. 24(b) — R.S.C. 1957, O.5 r.16.

Practice and Procedure — Admiralty suit in rem — Writ issued against defendants for payment of goods and services rendered — Warrant of arrest issued — Affidavit in support of warrant of arrest — Defendants claimed that affidavit was defective — R.S.C. 1957, O.12 r. 30, O.38 r. 10, O.70, O.75 rr. 5(7) & (9).

On February 13, 1975, the plaintiffs issued a writ against the defendants claiming payment for goods supplied and services rendered to the defendants, and at the latter's request in connection with the defendant's vessels including "Sri Melati". A warrant of arrest was issued on April 7, 1975 and the ship was arrested.

The defendants entered a conditional appearance and applied by motion for the writ to be set aside. They claimed that they were the registered owners of the said vessel which had been chartered to one Inter Indo Enterprises Company of Singapore and that it was this company that had entered into a written agreement with the plaintiffs. The defendants therefore claimed that they were not privy in any way to the plaintiffs and as they were not liable in personam, an action in rem was not maintainable against them. The defendants further contended that the arrest was wrongful and the affidavit supporting the warrant of arrest was defective.

Held: (1) at this stage of the proceedings there was no conclusive evidence to satisfy the court that the defendants could not be liable in personam;

(2) an action in rem would lie against a vessel which was in complete possession and control of persons (who need not own all the shares in the vessel) other than the registered owners viz. charterers by demise: *The "Andrea Ursula"*;[3]

(3) the absence of a specific statement that the claim remained unsatisfied was not a fundamental error but a mere irregularity which did not render the affidavit invalid;

(4) the defendants' contention that the affidavit was signed before the writ was issued, and was therefore inadmissible, could not avail: *H. Stacey* v. *Diamond Metal Products Co. Ltd. & Anor.*[1] *distinguished;*

(5) O.5 r. 16(a) of the R.S.C. has been complied with, the warrant of arrest was properly issued and no injustice has or could have been caused to any party;

(6) the motion to set aside the writ should therefore be dismissed with costs.

Cases referred to:-

(1) *H. Stacey* v. *Diamond Metal Products Co. Ltd. & Anor.* [1935] M.L.J. 249.

(2) *The St. Merriel* [1963] 1 All E.R. 537.

(3) *The "Andrea Ursula"* [1971] 1 Lloyd's Rep. 145.

IN REM ADMIRALTY SUIT

Darshan Singh for the plaintiffs.

N.T. Vello (*Mahinder Singh* with him) for the defendants.

Arulanandom J.: In this case the plaintiffs Palka Utama Shipping Co. Ltd. issued a writ against the owners of the Vessel "Sri Melati" now in the Port of Penang and all parties interested in her claiming the balance of sum of $103,795.29 on February 13, 1975 together with interest and costs being the cost of goods supplied and services rendered to the benefit and at the request of the defendants in connection with the defendants' vessels including "Sri Melati". The writ was issued by the Registrar of the High Court Penang on April 7, 1975. On the request of the plaintiffs for a warrant of arrest of the ship a Warrant of Arrest was issued on April 7, 1975 and the ship arrested.

On April 12, 1975 the owners of "Sri Melati" entered conditional appearance under protest and on April 14, 1975 applied to court by motion for an order:

1. That the Writ of Summons or service thereof be set aside and that all subsequent proceedings be dismissed or struck off on the grounds that the proceedings in rem are not maintainable against the registered owners of the "Sri Melati" as:—

(a) the vessel was at all material times chartered by demise;

(b) the registered owners are not and never have been persons who would be liable on the claim in an action in personam; and

(c) the charterers of the vessel by demise were not and never have been beneficial owners as respects all the shares in the vessel,

and that accordingly the action is misconceived, frivolous, vexatious and an abuse of the process of this Honourable Court.

2. That the warrant of arrest of the "Sri Melati" be discharged and that the plaintiffs do pay damages to the defendants in respect of the loss suffered by them as a result of the said arrest and that the determination of the amount of such damages be referred to the Senior Assistant Registrar, High Court, Penang or other appropriate officer that this Honourable Court may appoint.

3. That the plaintiffs be condemned in the costs of this motion.

The owners Sindomaya Shipping Sdn. Bhd. whose registered office is at 4th Floor, Wisma Kwong Siew, 149, Jalan Bandar, Kuala Lumpur, claimed that they were the registered owners of the said vessel which had been chartered to Inter-Indo Enterprises Company of Singapore and that it was this company that had entered into a written agreement with the plaintiff on October 14, 1971. They claimed they had never requested the plaintiffs for any goods or services and were not privy in any way to the plaintiffs. They also claimed the arrest of "Sri Melati" was wrongful and that the plaintiffs had no cause of action against the owners of the vessel. The grounds of their contention that the arrest was wrongful was stated in the affidavit of Moo Siew Ee a director of Sindomaya Shipping Sdn. Bhd. affirmed on April 25, 1975 at Penang in that

(a) that the said Affidavit of Ali bin Mohamed was sworn before the issue of the writ and is therefore inadmissible. The writ was issued on the 7th day of April 1975 and the Affidavit was sworn on the 5th day of April 1975.

(b) that the deponent Ali bin Mohamed failed to state that the alleged claim had remained unsatisfied.

(c) that the deponent had failed to state that in his belief the person who would be liable on the claim in an action in personam, was, when the cause of action arose, the owner or charterer or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought.

(d) that the deponent Ali bin Mohamed also failed to state the grounds of his belief.

The plaintiffs in their affidavit in reply contended that an action in rem against the vessel was in a special category and that even if the vessel had been chartered by demise both registered owners and charterers would be liable to the plaintiffs' claim in personam. They contended Inter-Indo Shipping (S) Pte. Ltd. (which took over the charter from Inter-Indo Enterprises Co. of Singapore) owned 399,997 of the 400,000 paid-up share capital of Sindomaya Shipping Sdn. Bhd. and were thus a holding company and hence the vessel was subject to arrest.

It was then admitted by Sindomaya Shipping Sdn. Bhd. that on November 23, 1972 it allotted 399,996 shares of $1 each out of its 400,000 issued shares to Inter-Indo Shipping (S) Pte. Ltd. and that 3,000 of these shares had been allotted to Inter-Indo Enterprises Private Ltd.

In Admiralty Actions our Courts are governed by section 24(b) of the Courts of Judicature Act which reads as follows:—

"24. Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include—

(b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Administration of Justice Act, 1956;"

Order 5 rule 16 of our Rules of Supreme Court sets out the rules governing issues of warrants of arrest of property in Admiralty Action in rem. Order 5 rule 16 reads as follows:

"16. In Admiralty actions in rem a warrant for the arrest of property shall be addressed to the bailiff of the Court and shall be in the prescribed form, with such variations as circumstances may require. It may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:

(a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counterclaim, the name and nature of the property to be arrested, and that the claim or counterclaim has not been satisfied;"

Regarding applicants' objection that the affidavit in support of the warrant of arrest was defective counsel for applicants conceded at the hearing that the third ground stated in the Moo Siew Ee's affidavit sworn to on April 25, 1975 viz. "that the plaintiffs' affidavit has failed to state that in his belief the person who would be liable on the claim in an action in personam, was, when the cause of action arose, the owner or charterer or in possession or control, of the ship in connection with which the claim arose and

was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought." was not applicable under our rules and was only relevant under English rules. This is evident from the reading of Order 5 rule 16 of the Rules of Supreme Court which does not include the provision of Order 5 rule 8 of the Rules of Supreme Court of England.

As regards the objection by the applicants that the plaintiffs' affidavit failed to state that the claim was not satisfied, having considered the affidavit of Ali bin Mohamed sworn to on April 5, 1975 especially paragraphs 3 and 9, the court is satisfied that the affidavit conveys that meaning. At the most the absence of a specific statement that the claim remains unsatisfied is not a fundamental error but a mere irregularity which does not render the affidavit invalid.

The third objection by the applicants to the request for warrant of arrest was that the affidavit in support of the request was signed on April 5, 1975 before the writ was issued which was on April 7, 1975. In this case from the indorsements on the various documents and from the notations on the court file the Writ of Summons, the affidavit of Ali bin Mohamed dated April 5, 1975, the Request for Admiralty Marshall to execute warrant, with undertaking as to his expenses, the Memorandum of Particulars, the Praecipe of service of Writ in Rem by Sheriff were all filed in the Registry of the Penang High Court on April 7, 1975 and the warrant of arrest issued on April 7. From the court records it does appear, in view of the sequence of the documents noted that the Warrant of Arrest was issued after the writ was issued and hence there is compliance with Order 5 rule 16 of the Rules of Supreme Court. But the more serious contention of the applicants seems to be that the affidavit was signed before the writ was issued. Much reliance was placed on the case of *H. Stacey* v. *Diamond Metal Products Co. Ltd. & Anor.*[1] where Terrell J. held that an affidavit as to certain matters in issue in an action of which no other person could give evidence, sworn to before the writ was issued could not be used as evidence as it was not made in a pending cause or matter and was therefore inadmissible as an affidavit and also because the other party had no opportunity of cross-examining the deponent. In the present case the question of affidavits generally is governed by Order 38 of the Rules of Supreme Court. Order 38 rule 10 reads as follows:—

"Every affidavit shall be filed in the Registry. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the court or a judge shall otherwise direct."

This rule is not *in pari materia* with the English rule in Order 38 rule 10 of the English Rules of the Supreme Court. However in the notes to the rule in the Annual Practice 1957 under the heading "Shall be indorsed" appears the following "Besides the note showing on whose behalf the affidavits are filed all affidavits in Q.B.D. are required to be indorsed with the date on which they were sworn and the date of filing. See P.M.P. (20) Pt. III. In Chancery proceedings the affidavit should be also indorsed with a note showing its purpose and the dates of swearing and filing." This is not the practice in our courts.

In the case of *H. Stacey* v. *Diamond Metal Products, supra,* an application was made under Order 25 rule 1 of the S.S. Civil Procedure Rules, 1934 for leave to prove certain facts by the use of an affidavit and while Terrell J. did not admit the affidavit to be used as evidence in the trial he had this to say "Certainly there may be cases in which an affidavit sworn a day or two previously or even affidavits which have not been sworn have been used in interlocutory applications on counsel undertaking that the affidavit shall be resworn or sworn and filed as the case may be." And further he stated "Even if from any point of view it could be treated as an affidavit in an intended action there is still the fatal objection that the plaintiff has never had the opportunity of cross-examining Hunter (the deponent) and that as Hall V.C. said is the true test."

To my mind there is an important distinction to be drawn between *Stacey's* case and the present one. In *Stacey's* case the affidavit was to be used to prove facts at a trial at which issues were to be adjudicated on and the deponent was dead. In this case no such facts were being proved. The affidavit was in support of a request for a Warrant of Arrest of a vessel in an Admiralty Action. Both the affidavit and the request for a warrant were filed, according to the court records after the filing of the writ. The trial of the issues are not before the court. (The law only requires that the Warrant of Arrest should be issued after issue of writ). The deponent is always available for cross-examination but no application has been made to do so. The law further requires that the Warrant of Arrest should be issued after an affidavit by the party or his agent has been filed. This has been done. If the grounds stated in the affidavit are proved to be insufficient or incapable of justifying a Warrant of Arrest the plaintiffs have given an undertaking to compensate the defendants in damages. So there can be no question of the defendants being prejudiced or adversely affected. And as Order 5 rule 16(a) has been complied with, the Warrant of Arrest was properly issued and no injustice has or could have been caused to any party.

Re the last ground of objection that the deponent Ali failed to state the grounds of his belief there is no merit in this whatsoever. There is no statement in the affidavit of Ali bin Mohamed sworn to on April 5, 1974 where he has deposed to any fact on his belief. In any event the English Rule Order 75 Rule 5 Sub-rules (7) & (9) stipulating what should be stated in affidavits to support the requests for warrants of arrest in Admiralty Action is not *in pari materia* with Order 5 rule 16 of our Rules of the Supreme Court and I see no merit in that contention.

For these reasons I hold that the Warrant of Arrest was properly issued and executed.

The second limb of the defendants' application is that the Writ of Summons and all subsequent proceedings be set aside.

Applications for orders to set aside writs of summons are made usually at the same time as applications to set aside service under the provisions of Order 12 rule 30 of the Rules of the Supreme Court. Order 70 of the Rules makes it clear that non-compliance with the rules or with any rule of service for the time

being in force shall not render any proceedings void unless the court or a judge shall so direct. Hence the applicants are only entitled to an order to set aside the writ *ex debito justitae* if the writ is a nullity.

The grounds urged by the applicants were not grounds alleging irregularity or non-compliance with the rules. Nor were they grounds which would justify an order that the writ is a nullity. At this stage the court is not and should not be concerned with the merits of the claim. The court is only concerned with two questions. Firstly, whether there is an irregularity in the writ or the service and if there is, whether it can be cured under Order 70. To this question the answer must certainly be no as no irregularities have been stated in the motion.

Secondly, whether the writ is a nullity in which case it is null and void *ab initio* and hence must be set aside. As far as this court is concerned the arguments addressed to the court were that the writ was a nullity as the court has no jurisdiction for reasons set out in the notice of motion, the substantive objection being that proceedings in rem are not maintainable against the registered owners of the "Sri Melati". The contention of applicants' counsel was

(1) That an action in rem could not lie against the vessel and the registered owners because an action in personam could not lie against them. They maintained that the ship was chartered by demise and whatever contract or arrangements the charterers had made did not make the registered owners liable;

(2) That an action in rem could not lie against a vessel chartered by demise and against the charterers unless the charterers owned all the shares in the vessel. They contended that only an action in personam would lie against the charterers.

Great reliance was placed on the case of *The St. Merriel*[2] in support of the first proposition and the case of *The "Andrea Ursula"*[3] for the second proposition.

In the case of *The St. Merriel* an action in *rem* was brought against the registered owners of the ship for repairs to the ship, etc. The owners applied for the writ to be set aside on the grounds that the ship had been chartered by demise and no action in personam could have been brought against them and hence the plaintiff had sued the wrong person and no action against the vessel in rem lay. Hewson J. allowed application and set aside the writ. The facts in that case as found by the learned judge were that the vessel at all material times was chartered by demise, that there was no contract with the defendants for carrying out the repairs and that all arrangements concerning repairs had been conducted between the charterers' agents and the plaintiff. There was no evidence of the charterers owning any or all of the shares in the ship. In concluding his judgment after considering various points which do not apply to this case Hewson J. said on p. 544:

"It seems to me that the purpose of section 3(4) of the Administration of Justice Act, 1956, is, amongst other things, to identify the person or persons whose ships may be arrested, and that such identification is a question of fact. I have had sufficient facts on affidavit in this case to reach a firm decision on who would be liable in this case if the action as constituted succeeded? It would be the person who, when the cause of action arose — be he the owner or the charterer or the person who is in possession or in control of the ship — made the contract for the repair by the plaintiffs; and on the evidence, as I say, I am satisfied that there was no contract, express or implied, between the owners and the repairers. I am satisfied that there was no liability on the owners when the cause of action arose. I am further satisfied on the second point which it is necessary to decide on this subsection that, when the action was brought, this ship was beneficially owned, as respects all the shares therein, by the owners, the defendants. If the Administration of Justice Act, 1956 (21) had said: 'beneficially owned' and stopped there, counsel for the defendants admitted that it might have been arguable that it might have embraced the charterers by demise. 'Beneficially owned' is not defined in the Act of 1956; and there are circumstances where a ship is owned by one person — that is, true ownership — where that person is the only person with a right to sell and yet where the same ship is beneficially possessed, or beneficially controlled, by some other person, such as in this case, where the ship is under charter by demise. But the words of the Act of 1956 (22) are 'as respects all the shares therein', and I conclude that the words are there for some purpose and that that purpose is to indicate the true owner, that is, the only person with a right to sell all the shares. So that, under this section also I find that, when the action was brought, the defendants were the persons who beneficially owned the ship as respects all the shares therein."

The reasons for Hewson J. setting aside the writ are set out in the passage quoted above.

In the case before us however the facts as evidenced before the court at this stage are different. Firstly, except for a bare statement of the applicants that the vessel was chartered by demise there is no conclusive evidence of the exact nature of the relationship between the owners and those in full complete control and possession of the vessel the Inter-Indo Shipping (S) Pte. Ltd. who by the applicants' own admission were the successors to Inter-Indo Enterprises Co. to whom the vessel was chartered. The only material evidence from which one can infer the relationship is the letter of appointment exhibited to the affidavit of Moo Siew Ee dated April 14, 1975 on behalf of the applicants. In the letter of appointment Inter-Indo Enterprises Co. describe themselves as the owners' agents. If in fact the alleged charterers were agents the owners would be liable in an action in personam. And at this stage of the proceedings there is no conclusive evidence to satisfy the court that they could not be liable in personam to the plaintiffs.

With regard to the second contention, the case of *The "Andrea Ursula"*[3] decided that an action in *rem* would lie against a vessel which was in complete possession and control of persons (who need not own all the shares in the vessel) other than registered owners *viz.* charterers by demise who then would come under the definition of beneficial owners under the Administration of Justice Act (English) 1956.

The case of *The St. Merriel* and particularly Justice Hewson's interpretation of section 3(4) of the Administration of Justice Act, 1956 were considered and his interpretation of "beneficial owner" to mean the "beneficial owner of all the shares" was rejected. Justice Brandon in differing from Justice Hewson on the definition of "beneficially owned" stated at p. 147 (l.h.c. last para.):

"There is no definition in the Act of the expression 'beneficially owned' as used in section 3(4). It could mean owned by someone who, whether he is the legal owner or not, is in any case the equitable owner. That would cover both the case of a ship the legal and equitable title to which are in one person, *A*, and also the case of a ship the legal title to which is in one person *A*, but the equitable title to which is in another person, *B*. In the first case the ship would be beneficially owned by *A*, and in the second case by *B*.

Trusts of ships, express or implied, are however, rare, and the words seem to me to be capable also of a different and more practical meaning related not to title, legal or equitable, but to lawful possession and control with the use and benefit which are derived from them. If that meaning were right, a ship would be beneficially owned by a person who, whether he was the legal or equitable owner or not, lawfully had full possession and control of her, and, by virtue of such possession and control, had all the benefit and use of her which a legal or equitable owner would ordinarily have.

A ship which is demise chartered is an example of a ship which is possessed and controlled by a person not the legal or equitable owner in the way that I have described."

After giving various reasons supported by leading cases and authorities for his varying from Justice Hewson's definition, and laying down the proposition that an action in *rem* would lie against the vessel if an action in personam could be brought against the person who lawfully had full possession and control of her and had all the benefit and use of her, Justice Brandon concluded on page 150 *(ibid):*

"For the reasons which I have given I am of opinion that the Andrea Ursula was, at the date when this action was brought, beneficially owned as respects all the shares therein by Anglo-Med within the meaning of section 3(4) of the 1956 Act. I have already found that the plaintiffs' claim arises in connection with the Andrea Ursula and that Anglo-Med, being the persons liable on the claim in an action in personam were, when the cause of action arose, the charterers of the Andrea Ursula.

It follows that all the requirements of section 3(4) are fulfilled and the court has jurisdiction to entertain proceedings in rem against the Andrea Ursula in respect of the claim and to give the plaintiffs all such relief as is appropriate to such proceedings."

The nearest one can come to establishing the relationship between the defendants (owners) and Inter-Indo Shipping (S) Pte. Ltd. who contracted with the plaintiffs was that they were agents of the owners.

Therefore even if it is established, which to this stage has not been, that Inter-Indo Shipping (S) Pte. Ltd. are charterers by demise an action in rem against the "Sri Melati" will lie and the court has jurisdiction to entertain the proceedings. The writ is addressed to "The Owners of the vessel 'Sri Melati' now in the Port of Penang and all parties interested in her." The defendants of their own volition and in spite of owning only 3/400,000 shares and their close relationship with Inter-Indo Shipping (S) Pte. Ltd. chose to enter appearance under protest, with a view to having the writ struck off. In this connection, it would be of some interest to quote Brandon J. in The *"Andrea Ursula's"* case *supra* at page 150 last paragraph:

"I will tell you what is in my mind about that. It may be the reason why the parties interested in this ship have not appeared before me is because they relied on the decision in *The St. Merriel.* It seems to me that in those circumstances the court ought to ensure that there is a reasonable period of time within which, this judgment having been reported in 'Lloyd's List', the parties interested might consider their position and perhaps take a different course from that which they have taken up until now."

Several other points were raised by counsel for applicants and plaintiffs before me but for the purposes of the motion, the matter has been disposed of.

I would therefore dismiss the motion with costs.

Motion Dismissed.

Solicitors: *Allen & Gledhill; Chang & Vello.*

LEE CHOW MENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Hamid J.) October 22, 1975]
[Kuala Lumpur — Selangor Criminal Appeal No. 64 of 1975]

Criminal Law and Procedure — Sentence — Judicial notice — Prevalence of offences involving firearms — Consecutive terms of imprisonment.

Evidence — Judicial notice — Common knowledge — Notorious fact.

This was an appeal against the sentences of (a) 7 years' imprisonment and five strokes (b) 10 years' imprisonment and six strokes and (c) 7 years' imprisonment imposed in the Sessions Court, Kuala Lumpur, for the offences of armed robbery, possession of arms and possession of ammunition. The sentences were ordered to run consecutively. The learned president in passing sentence took judicial notice of the prevalence of the commission of offences involving firearms in Kuala Lumpur.

Held: (1) the court is entitled to take judicial notice of the fact of the prevalence of the commission of offences involving firearms in Kuala Lumpur;

(2) in the circumstances of this case, the learned president was justified in ordering the sentences of imprisonment to run consecutively.

Cases referred to:-

(1) *Dennis* v. *White* [1916] 2 K.B. 1 at p. 6.

(2) *Ram Terak* v. *Selgram* [1944] A.C. 153.

(3) *Yong Pak Yong* v. *Public Prosecutor* [1959] M.L.J. 176.

CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the respondent.

Abdul Hamid J.: The appellant was charged in the Sessions Court on the following charges: —

"(1) That you, on December 7, 1973 at about 2.15 p.m. at Jalan San Peng, Kuala Lumpur, in the State of Selangor, with three others still at large, in furtherance of a common intention as defined under section 34 of the Penal Code, robbed one S. Joseph, a Clerk with the Dewan Bandaraya, Kuala Lumpur, of cash $71.820.31 and at the time of committing the said robbery used deadly weapons, to wit 'Four Revolvers' and that you have thereby committed an offence punishable under section 392 of the Penal Code, to be read in conjunction with section 397 of the Penal Code.

(2) That you on April 11, 1975 at about 11.15 p.m. at Flat No. B.6/2, Khoon Lin Court, off Pasar Road, in the city of Kuala Lumpur, not being a person subject to the provisions of section 6 of the Arms Act No. 21/60, did have unlawful possession of a firearm, to wit, one 'STAR 7.65 m.m. Automatic Pistol in contravention of the provisions of section 3(1) of the said Act and that you have thereby committed an offence punishable under section 8 of the Firearms (Increased Penalties) (Amendment) Act No. 256 of 1974.

(3) That you on April 11, 1975 at about 11.15 p.m. at Flat No. B. 6/2, Khoon Lin Court, off Pasar Road, in the city of Kuala Lumpur, not being a person subjected to the provisions of section 6 of the Arms Act No. 21/1960, did have in your possession 30 rounds of 7.65 m.m. ammunition in contravention of the provision of section 3(1) of the said Act and that you have thereby committed an offence punishable under section 9(a) of the Arms Act No. 21/1960."

The learned president convicted the appellant on all the charges and sentenced him to — (a) seven years' imprisonment and five strokes; (b) 10 years' imprisonment and six strokes and (c) seven years' imprisonment respectively.